

District of Oregon

Corresponds to AO 242

Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(Rev. 9/18)

FILED 3 JUN 19 10:52 USDC-ORP

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# UNITED STATES DISTRICT COURT

## District of Oregon

Haarun Abu Latif Munir*Petitioner*

v.

Case No. 3:19-cv-00873-SU*(to be assigned by the Clerk of Court)*United States of America*Respondent**(name of warden or authorized person having custody of petitioner)*

### PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

#### Personal Information

1. (a) Your full name: Haarun Abu Latif Munir  
 (b) Other names you have used: Harry Truman Hicks Jr.
2. Place of confinement:  
 (a) Name of institution: FCI Sheridan  
 (b) Address: P.O. Box 5000  
Sheridan, OR 97378  
 (c) Your identification ("SID") number: 10857-046
3. Are you currently being held on orders by:  
☒ Federal authorities      ☐ State authorities      ☐ Other - explain:  
 \_\_\_\_\_
4. Indicate that you are currently:  
☐ A pretrial detainee (waiting for trial on criminal charges)  
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime  
 If you are currently serving a sentence, provide:  
 (a) Name and location of the court that sentenced you: United States District Court for the  
District of Montana  
 (b) Docket number of criminal case: CR 10-64-GF-SEH  
 (c) Date of sentencing: December 16, 2010  
☐ Being held on an immigration charge  
☐ Other (explain): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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**Decision or Action You Are Challenging**

5. Indicate what you are challenging in this petition:

☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)☐ Pretrial detention☐ Immigration detention☐ Detainer☒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)☐ Disciplinary proceedings☒ Other (explain): P.S.I. Enhancements used were unconstitutional as they  
were Washington State drug predicates under RCW 69.50.401.

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: U.S. District Court of Montana/Great Falls(b) Docket number, case number, or opinion number: CR-10-64-GF-SEH

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Sentence and PSR(d) Date of the decision or action: 12/16/2010**Your Earlier Challenges of the Decision or Action**7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: United States Court of Appeals  
for the Ninth Circuit(2) Date of filing: 12/20/2010(3) Docket number, case number, or opinion number: 10-30373(4) Result: Sentence affirmed.(5) Date of result: 10/03/2011(6) Issues raised: Did the sentencing judge properly weigh mitigating  
factors at sentencing.

(b) If you answered "No," explain why you did not appeal: \_\_\_\_\_

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☒ Yes

☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Uninted States Supreme Court

(2) Date of filing: 12/13/2011

(3) Docket number, case number, or opinion number: 11-7897

(4) Result: Writ of certiorari denied.

(5) Date of result: 01/24/2012

(6) Issues raised: Did the sentencing judge properly weigh mitigating  
circumstances at sentencing.

(b) If you answered "No," explain why you did not file a second appeal: \_\_\_\_\_

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a third appeal: No higher authority.

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☒ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☒ Yes ☐ No

If "Yes," provide:

(1) Name of court: United States District Court/Great Falls Division

(2) Case number: 4:13-CV-09-GF-SEH

(3) Date of filing: February 01, 2013

(4) Result: Denied

(5) Date of result: June 12, 2013

(6) Issues raised: Conviction obtained by plea of guilty, which did not have proper understanding of the nature of the charges and consequences of the plea; Ineffective assistance of counsel, counsels failure to object to PSR, counsels failure to object to weapon enhancement, counsels failure to object to leader organizer enhancement.

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes

☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: \_\_\_\_\_
- (b) Date of the removal or reinstatement order: \_\_\_\_\_
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☐ No

If "Yes," provide:

- (1) Date of filing: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Result: \_\_\_\_\_
- (4) Date of result: \_\_\_\_\_
- (5) Issues raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☐ No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Date of filing: \_\_\_\_\_
- (3) Case number: \_\_\_\_\_

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(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**12. Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: \_\_\_\_\_

(b) Name of the authority, agency, or court: \_\_\_\_\_

(c) Date of filing: \_\_\_\_\_

(d) Docket number, case number, or opinion number: \_\_\_\_\_

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

(g) Issues raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Grounds for Your Challenge in This Petition**

13. State every ground that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Ineffective assistance of counsel, counsel failed to  
object to the PSR enhancements in respects to the Washington state  
drug convictions under R.C.W. 69.50.401 which are broader than analogous  
generic federal drug trafficking.

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(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Washington Revised Code § 69.50.401 does not qualify as serious drug offense[s] under the Career Offender Act. The Ninth Circuit has held that it is broader than analogous generic drug offense of the federal drug trafficking laws, thus making Washington Revised Code § 69.50.401 unconstitutionally vague.

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes☒ No

**GROUND TWO:** Violation of my Eighth Amendment right by subjecting me to cruel and unusual punishment.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

On 12/16/10 I was sentenced to a term of 300 months, a sentence that was enhanced improperly due to an incorrect PSR sighting Washington Revised Code § 69.50.401 which could not be used due to unconstitutional vagueness of Washington state drug predicates that were used to enhance the sentence.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes☒ No

**GROUND THREE:** Violation of due process of law under the Fourth, Fifth, and Sixth Amendments.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Under 28 U.S.C. 2072 (b) that Federal Rules of Procedure may not deprive anyone of substantive rights, this is the essence of the Fifth Amendment that no person shall be deprived of life, liberty, or property without due process of law to challenge the grand jury array, consequently I have been deprived of substantive due process which is expressly prohibited under 28 U.S.C. 2072 (b).

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes☒ No



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**GROUND FOUR:** Procedural error by the District Court for failing to calculate the guideline range properly as well as failing to adequately explain the sentence selected which is abuse of discretion.

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

During the dispute resolution process as described in U.S.S.G § 6A1.2 the defense raised no objections to the mathematical accuracy of the criminal history score and the advisory guideline calculation. Court referred to defendant's multiple felony drug convictions under Washington Revised Code § 69.50.401 that are not eligible to enhance the sentence.

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: Constitutional Law Change.

#### Request for Relief

15. State what you want the Court to do: Vacate and remand with instructions from this court.



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**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:\*

May 30, 2019

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

May 30, 2019

May 30, 2019

Haarun Abu Latif Munir

Signature of Petitioner

Haarun Abu Latif Munir Reg. No 10857-046

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Signature of Attorney or other authorized person, if any

\* As noted in the instructions to this form (at #6), if you are incarcerated at Snake River Correctional Institution, you must comply with the requirements of the E-Filing Pilot posted at the institution and set forth in Standing Orders 2017-9 and 2018-05. Accordingly, you must submit your filings in this case to Snake River Correctional Institution staff for scanning and electronic submission, instead of mailing the filing using the U.S. Postal Service. Please indicate the date you submitted this petition to Snake River Correctional Institution staff for scanning and electronic submission, if you are incarcerated there.